**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION.**

**SECOND APPEAL NO.514 OF 2004.**

Shri Krishnaji Pandurang Gurav
since deceased through his LRs
Smt.Shalini Krishnaji Gurav : Appellant.

versus

Shri Babulal Mangilal Jain : Respondent.

Mr.Varsha Palav for the appellant.
Mr.P.S.Dani for the respondent.

**CORAM : D.G.DESHPANDE,J.**

**DATED : 26th APRIL 2005.**

**ORAL ORDER**

1. By consent of both the advocates for the appellant and respondent the appeal is taken up for final hearing at the admission stage. Heard advocates for the appellant and respondent. This appeal is filed by the original defendant. The suit was filed by the plaintiff against the

appellant/defendant for specific performance of contract. It was decreed. The appeal of the appellant came to be dismissed. Hence this appeal.

2. Firstly, the learned counsel for the appellant could not formulate any substantial question of law nor she could show as to what was the substantial question of law. However, according to her, the agreement between the parties does not show name of the purchaser; secondly, time was the essence of agreement; and thirdly, according to her, there was variance between the agreement and final agreement. All the three points, however, have been rightly rejected by the courts below.

3. It is true that in the draft agreement the name of purchaser is not mentioned, but it was the appellant who gave notice to the respondent calling upon him to execute the sale deed. This clearly shows that the appellant has accepted the agreement as it is and has not made any grievance that the agreement was vague. Secondly, there is nothing in the agreement from which it can be construed that the time was made

as essence of agreement. Merely mentioning the date of sale deed does not make the time as essence of contract. Thirdly, there is a variance between the draft agreement and final concluded agreement because the concluded agreement is signed by the appellant and most important thing that is pointed out by Mr.Dani, appearing for the respondent, is that the appellant did not enter the witness box. In these circumstances, therefore, there is no merit in this appeal. It is dismissed with costs.

[D.G.DESHPANDE]

26/04/2005 JUDGE.